

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
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| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms |) | CC Docket No. 98-171 |
| |) | |
| Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 |) | CC Docket No. 90-571 |
| |) | |
| Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size |) | CC Docket No. 92-237 NSD File No. L-00-72 |
| |) | |
| Number Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| Telephone Number Portability |) | CC Docket No. 95-116 |

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. (“AWS”) hereby submits its comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

^{1/} Federal-State Joint Board on Universal Service, CC Docket No. 96-45; 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72; Number Resource

INTRODUCTION AND SUMMARY

In the Notice, the Commission seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.^{2/} Specifically, the Commission requests comment on various proposals to require carriers to contribute based on a percentage of collected revenues or on a flat-fee basis, such as a per-line charge.^{3/} The Commission correctly recognizes that it may be time to revisit the concepts underlying the existing contribution system to ensure that providers of interstate telecommunications services “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”^{4/}

AWS agrees that the current universal service contribution methodology should be reformed. Assessing universal service contributions based on past revenues with a six-month interval between revenue accrual and assessment of contributions has led to significant market distortions, customer confusion, and discrimination among carriers. The Commission itself notes that to recover costs under the current system, which most carriers have elected to do, carriers have to engage in complex calculations to account for unforeseeable market variables, such as uncollected revenues, credits, and declining revenue bases.

Optimization, CC Docket No. 99-200; Telephone Number Portability, CC Docket No. 95-116, Notice of Proposed Rulemaking (rel. May 8, 2001) (“Notice”).

^{2/} Id. at ¶ 1.

^{3/} Id. at ¶ 2.

^{4/} 47 U.S.C. § 254(d); Notice at ¶ 3.

The most appropriate way to address the problems inherent in today's regime would be to assess universal service contributions based on current collected revenues. Eliminating the six-month lag would permit carriers to pass through universal service costs to customers in a coherent fashion without bearing the risk of over-recovery or under-recovery. As a result, the widely varying line item charges among carriers would likely disappear and there would be no need to regulate the manner in which carriers recover costs from their customers.

In addition, because wireless carriers are unable to determine with any certainty the amount of revenue attributable to interstate traffic, the Commission should continue to apply the interim 15 percent safe harbor for calculating the percentage of interstate revenues for wireless carriers. Although the wireless industry has experienced considerable growth, partially as a result of calling plans that in essence make a region or the entire country a "local" calling area, the cost of wireline long distance calling has come down at an equally rapid rate. There is no reason to believe, therefore, that wireless interstate usage has surpassed that of wireline. Continued application of the safe harbor is reasonable and would help alleviate uncertainty and discrimination among carriers.

I. THE COMMISSION SHOULD ASSESS UNIVERSAL SERVICE CONTRIBUTIONS BASED ON CURRENT COLLECTED REVENUES

As the Commission states, the universal service contribution system must reflect current market trends and be simple for carriers to administer.^{5/} The current regime does not meet either of these criteria. Rather, by basing contributions on historical revenues, the methodology now employed by the Commission disadvantages carriers with declining market shares, provides an advantage to new market entrants and results in large discrepancies in line-item charges on consumer bills. To eliminate these inequities, the Commission should adopt its proposal to

modify the universal service system by assessing contributions based on a carrier's current collected interstate revenues and removing the six-month interval between the reporting of revenues and the assessment of carrier contributions.

The interval between revenue reporting and assessment of contributions under the current regime creates customer confusion because cost recovery bears no relationship to the manner in which contributions to the fund are calculated. Today each carrier pays a percentage of the revenues it reported six months earlier, but it must recover those contributions from its current customer base. In growing industries, the existing revenue base will most likely be greater than that against which the contribution was assessed, and in a declining industry just the opposite occurs. As the objective is to recover only what is owed -- no more, no less -- carriers are in a constant adjustment battle. The results of this battle are the wide discrepancy in end user charges from carrier to carrier and even within the same carrier on a month-to-month basis.

While the Commission raises legitimate concerns about the extent to which the end user line item fee varies,^{5/} so long as the assessments on carriers are based on past revenues, the actual factor carriers use for recovery will always be different than that shown in the Commission's quarterly contribution notice. In contrast, a current collected revenue based assessment would relieve carriers of the need to engage in complex calculations to account for such variables as uncollected revenues, credits, differing customer base projections, and contributions from growing industries and declining industries. Simply put, carriers could apply exactly the same contribution factor to recover their universal service contributions that the Commission uses for assessment purposes.

^{5/} Notice at ¶ 6.

^{6/} Id. at ¶ 5.

AWS also agrees with other carriers that the existing historical revenue mechanism provides a significant competitive advantage to new entrants to the interstate market.^{7/} First, new entrants are given a six-month grace period in which they have to make no contributions whatsoever to the universal service fund because they have no historic revenues. Then, on a going-forward basis, a new entrant's market share generally continues to increase so that it has a much larger revenue base over which to spread costs than that on which the costs were based in the first place. As a result, a new carrier could set its end user cost recovery charge much lower than an incumbent, or it could enjoy a significant windfall if it recovers the same amount as the incumbent. While the incumbent could forgo recovery (and absorb the higher costs), charge higher rates, or include a larger line-item charge on consumer bills than the new entrant, any of these alternatives puts it at a distinct competitive disadvantage.

This discrimination also occurs in situations in which there have been transfers of customer bases from one carrier to another, irrespective of whether either carrier is a new entrant. For example, if revenues are reported in month one by Carrier A, and some or all of Carrier A's customer base is assigned to another carrier in month five, Carrier A is still liable for the contributions in month six although it no longer serves the customers that generated the revenues in month one. In the current era of bankruptcies this problem is likely to adversely affect the integrity of the universal service fund -- not just individual carriers -- as the six-month lag time could leave the Commission and USAC with no way of collecting contributions from carriers that have gone out of business since they reported their revenues.

As part of the fund reform process, it is not enough that the Commission assess contributions based on current collected revenues. It is also essential that the Commission set the

^{7/} Id. at ¶ 14.

universal service contribution factor each quarter to correct for over-recovery or under-recovery from previous quarters and not require carriers to “true-up” contribution amounts. Today, hundreds of carriers are forced every three months to gaze into a crystal ball in an attempt to determine what amount they must collect from customers to come out even, taking into account incorrect recoveries from the past quarter, uncollectibles, and changing revenue bases. A wrong guess on one point can result in a miscalculation that amounts to millions of dollars in a single month. It is also necessary that each rate change be announced with sufficient time before its effective date to ensure adequate time to allow billing system adjustments. A true-up requirement or abrupt rate changes would perpetuate the uncertainty that now exists and would violate Section 254(d)’s requirement that the fund operate in an equitable, nondiscriminatory, and predictable fashion.^{8/}

II. THERE IS NO NEED TO REGULATE RECOVERY OF UNIVERSAL SERVICE CONTRIBUTIONS

If the Commission transitions to a current collected revenue base assessment with no true-ups, there would be no need to regulate how carriers recover their universal service contributions.^{9/} In such a case, the widely fluctuating pass-through charges previously experienced by consumers would not occur because carriers would no longer bear the risk of recovering costs from a changing customer base or correcting for under or over collections in previous quarters. It is likely that USAC’s contribution factor would become the de facto recovery factor for all carriers.

^{8/} 47 U.S.C § 254(d).

^{9/} See, e.g., The 2000 Biennial Regulatory Review, Report, CC Docket No. 00-175 (rel. Jan. 17, 2001) (noting that the Commission may modify or repeal rules that are no longer necessary).

If the Commission continues to use a historic assessment, however, it would be unfair to limit the manner by which carriers recover their contributions. As the Commission recognizes, under those circumstances, carriers need the flexibility to revise the contribution factor to account for such variables as uncollected revenues, differing revenue projections, differing customer base projections, and the possible need to recover universal service contributions from a declining revenue base. Requiring carriers to use an established pass-through factor would give some carriers an enormous windfall and punish those that are losing market share.

AWS also supports the Commission's proposal that carriers describe the universal service fund line-item on customer's bills uniformly, using either "Federal Universal Service Charge" or "Federal USC" as billing system spacing fields allow.^{10/} Carriers should not have to incur costs to change their billing systems simply to allow a field with the requisite thirty-two spaces in "Federal Universal Service Charge." While a uniform line item would benefit consumers by making it easier for them to compare one carrier's charges to another's, AWS emphasizes that consumer confusion will persist until there is some greater consistency in the assessment of universal service contributions. Uniform labeling alone cannot solve this problem.

III. THE COMMISSION SHOULD CONTINUE THE USE OF THE INTERIM SAFE HARBOR FOR CALCULATING THE PERCENTAGE OF WIRELESS CARRIERS' INTERSTATE REVENUES

No matter what assessment methodology the Commission adopts, it should continue to use the interim 15 percent safe harbor for calculating the percentage of wireless carriers' interstate revenues. As was the case in 1999 when the safe harbor was adopted, the wireless industry lacks the ability to determine with any degree of certainty the amount of revenue

^{10/} Notice at ¶ 42.

attributable to interstate traffic.^{11/} The reason for this is twofold: the nature of wireless service and the prevalence of “one-rate” calling plans.

First, wireless service areas often extend beyond the boundaries of a particular state. Although carriers can determine the cell sector in which the call originates, when the cell site is located near a state border, the antenna may pick up a call from a neighboring state. The call will be categorized as interstate or intrastate based on the location of the cell site, not where the caller is actually located.

Second, as the Commission notes, many wireless plans today allow customers to pay a flat monthly fee for a bucket of minutes that can be used either for intrastate or interstate calling.^{12/} While built into these plans is a general assumption that the revenue is divided among a monthly charge for access, minutes of use, and long distance calls, the actual revenue collected cannot be associated with one category or another. For this reason, a safe harbor for wireless carriers remains necessary and appropriate. Any wireless carrier that wants to use a lower percentage should be permitted to do so if it can demonstrate to the Commission that its interstate revenue is less than fifteen percent of its total end user revenue.

Fifteen percent remains the correct proportion of revenue for the safe harbor. When that figure was arrived at two years ago,^{13/} it was likely considerably higher than the actual interstate revenues of most wireless carriers. Although flat-rate customer plans may have resulted in increased interstate calling since that time, there is no evidence to support the conclusion that the

^{11/} Federal State Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-21259 at ¶ 13 (rel. Oct. 26, 1998) (noting that one reason for adoption of the interim safe harbor was because wireless carriers could not determine which revenues are interstate) (“Interim Safe Harbor Order”).

^{12/} Notice at ¶ 24.

^{13/} Interim Safe Harbor Order at ¶ 13.

revenues attributable to it exceed 15 percent today. Similarly, the most recent Dial Equipment Minutes (DEM) weighting statistic, which the Commission used to set the interim safe harbor,^{14/} shows a drop from 15 percent to 14 percent for wireline interstate usage.^{15/} Given the significant decrease in wireline long distance rates, it is unlikely that many customers have shifted their long distance calling to wireless networks notwithstanding the advent of one-rate plans. To the contrary, it is reasonable to conclude that while the wireless industry has grown considerably, the percentage of interstate revenue derived from wireless end users has remained relatively constant.

^{14/} Id.

^{15/} September 2000 Universal Service Monitoring Report, CC Docket No. 98-202, Table 8.3 (rel. November 2000).

CONCLUSION

For the foregoing reasons, the Commission should reform its universal service contribution methodology consistent with the proposals herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margaret Davis, hereby certify that on this 25th day of June 2001, I caused copies of the foregoing "Comments of AT&T Wireless Services, Inc." to be sent by hand delivery to the following:

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